IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 6934 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KANUBHAI VALABHAI BHARWAD AND ANOTHER
Versus
THE STATE OF GUJARAT AND OTHERS

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Appearance :
MR BS PATEL for Applicants. MRS RANJAN B PATEL for Applicants.
MR RADHAKRISHNAN V for Applicant No. 1, MRS NISHA M PARIKH for Applicant No. 2.
MS MANISHA SHAH, APP for Respondent No. 1.
RULE SERVED for Respondent Nos. 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 27/12/2005

ORAL JUDGMENT

By filing this application, the applicants have prayed that F.I.R. registered with Dhansura Police Station being C.R.No. I 53 of 2004 filed

by respondent No.3 namely, Hakubhai Dahyabhai Bharwad may be quashed and set aside. Aforesaid complaint is filed under Sections 363, 366, 504, 506 (2) read with Section 114 of Indian Penal Code. The case of the complainant before the police is that his daughter - Jaluben is kidnapped by applicant No.1 and others, at the time when she went for washing clothes near a well.

According to the complainant, his daughter is aged about 16 years and since she has been kidnapped by applicant No.1 and others, aforesaid complaint has been filed by him against applicant No.1 and others, who are family members of applicant No.1.

Applicant No.1 is the original accused and applicant No.2 is the daughter of respondent No.3 – original complainant.

On 18-10-2004, learned Single Judge of this Court has passed the following order :

> "1. Pursuant to the orders passed by this Court on 20.09.2005 and 03.10.2005, the petitioner No. 2 is brought by Mrs. Madhuben Parmar, In-charge Superintendent, Nari Sanrakshan Gruh, Mehtapura, Himmatnagar. On being asked to the petitioner No. 2, she refused to go to her father's place. She has reiterated that she wants to stay with her husband i.e. petitioner No. 1 despite the fact that he has married earlier and at present he is in jail.
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> 2. In the above view of the matter, since the petition is pending before this Court, the Court deems it fit and proper to ask the petitioner No. 2 to stay at Nari Sanrakshan Gruh, Mehtapura, Himmatnagar till further order. Though the father of the petitioner No. 2 has stated that petitioner No. 2 should be sent with him at Gandhigram, Rajkot. However, looking to the facts

of the case and since the petitioner No. 2 does not want to go to Rajkot, the said request has not been accepted. The matter is, therefore, adjourned for further hearing on 20.10.2005."

Today, both the applicants are present before this Court. It is pointed out by both the applicants that they have married and their marriage certificate is also annexed along with this application at page No.14. At the time of hearing of this application, both the applicants No.1 and 2 have stated that they are living together happily as husband and wife and that the applicant No.2 being major is entitled to stay with her husband as per her own wish and she cannot be compelled to go with respondent No.3 (her father). Mr.B.S.Patel, learned advocate for the applicants submitted that the applicant no.2 is aged about 20 years and she is major. The investigating officer, who is present before the Court, has submitted that ossification test of applicant No.2 was taken out and as per the certificate of the Doctor, her age is between 19 to 20 years. Thereafter, applicant No.2 submitted that she would like to stay with applicant No.1 (her husband) and, therefore, she may be permitted to stay with the applicant No.1.

Respondent No.3, who is also present before the Court, has submitted that if applicant No.2 is not willing to stay with him and if she wants to stay with applicant No.1, he has no objection. He, however, submitted that he has incurred heavy expenditure for tracing out his daughter by engaging transport vehicles etc., and some costs may be awarded to him. This Court is not concerned about this aspect, however, it is pointed out to the Court the applicant No.1 has paid adequate amount towards expenditure to respondent No.3.

At this stage, Mr.B.S.Patel, learned advocate for the applicants has relied upon the decision of learned Single Judge of this Court delivered in Criminal Misc. Application No.6264 of 2004. In paragraph 7 of the said judgement, learned Single Judge has observed as under :

> “7. Today both the petitioners are living as husband and wife and the victim girl is likely to deliver a child in a couple of days. If the complaint is permitted to be continued, both the petitioners are likely to face great hardship and inconvenience; especially the petitioner no.2, against whom the scope of success of prosecution is practically nill, in absence of any favourable evidence from the star witnesses, prosecution would not succeed. It also cannot be ignored that though the incident is of 12th April, 2004, the complaint was filed on 31st May, 2004, by the complainant. The ratio of the decision in the case of S.W. Palnitkar and others v. State of Bihar and another, reported in 2002 (1) SCC 241 and Madhavrao Scindia's case, reported in AIR 1988 SC 709, whereby the Apex Court has held that where there are bleak chances of success of prosecution, it is no use of continuing the prosecution and such proceedings can be quashed. In the cited decision, the Apex Court has held that :
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> > "7. The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilized for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

Ms. Manisha Shah, learned APP, submitted that in view of above facts and circumstances of the case, appropriate order may be passed, as deemed fit by this Court.

It is required to be noted that both the applicants are major and as per ossification test age of the applicant No.2 is found to be of 19 to 20 years. It is also pointed out by her to this Court that she is willing to stay with her husband (applicant No.1). Considering the fact that applicant No.2 is not willing to stay with respondent No.3 and considering the fact that both the applicants have married and they are residing together happily, it would not be just and proper to allow further investigation of the complaint in question. It is apprehended by respondent No.3 that the applicants may take out some proceedings against him as he has filed the present complaint, however, it is assured by applicants No.1 and 2 that they will not take out any proceedings against respondent No.3 as a counter-blast to the present complaint. Respondent No.3 has also stated that he is not interested in harassing the applicants and he will also not file any complaint with regard to the issue in question.

Considering aforesaid aspect of the matter, this application is allowed. Complaint being C.R.No. I 53 of 2004 registered with Dhansura Police Station is quashed and set aside. Charge sheet submitted on the basis of aforesaid complaint as well as criminal case pending before the concerned Court are also quashed. Rule is made absolute accordingly.

(P.B.MAJMUDAR, J.)

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